On the other hand if the Bank is relying on some collateral parole arrangement then parole evidence of the alleged provision for six months' notice is clearly admissible. On this basis, then, the claim cannot be decided until the question of fact as to the six months' provision is tried out and decided.

I would only add that I am not overlooking the consideration that if the Bank had been suing for money had and received the position might be different. But it is not suing for money had and received — it is suing for money lent and stipulated interest.

For these reasons I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah J.** concurred.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; N. Sharma.*

TAN KHIO SOEI & ANOR. v. BAN HIN LEE BANK LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wee Chong Jin C.J. (Singapore)) December 17, 1964]

[Singapore — Federal Court Civil Appeal No. 40 of 1963]

Landlord and Tenant—Termination of contractual tenancy—Statutory tenancy—Death of statutory tenant—Whether rights of deceased statutory tenant passed to his estate—Control of Rent Ordinance (Cap. 242), ss. 27 and 28.

Under section 27(a) of the Control of Rent Ordinance a person can claim to be a statutory tenant if (i) he is a tenant of the premises (ii) his tenancy has been determined (iii) he has remained in possession after determination of his tenancy and (iv) the provisions of the Ordinance prevent him being deprived of possession by the landlord of the premises. So long as the statutory tenant continues to fulfil the four conditions specified in section 27(a) he remains a statutory tenant and *ex hypothesi* his statutory tenancy cannot be determined by his landlord giving him notice under section 28(b) although it can be determined by the statutory tenant giving a notice to the landlord. Once a statutory tenant ceases to fulfil one of the four conditions mentioned in section 27(a) his tenancy ceases to be a statutory tenancy and therefore section 28(b) has no application because it only applies to statutory tenancies.

The right of a statutory tenant is a purely personal right to possession of the premises. This right is extinguished with the death of the statutory tenant.

Cases referred to:—

(1) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105, 106.

(2) *Keeves* v. *Dean* [1924] 1 K.B. 685, 690.

(3) *John Lovibond & Sons Ltd.* v. *Vincent* [1929] 1 K.B. 687.

FEDERAL COURT, Appeal from the judgment of Buttrose J., [1963] M.L.J. 275.

L. A. J. Smith for the appellants.

A. P. Godwin for the respondents.

Cur. Adv. Vult.

Thomson L.P.: The plaintiffs in this case and the respondents to the present appeal are the Ban Hin Lee Bank Limited who are the owners of premises at No. 52, Circular Road, Singapore, which consist of a ground floor and two upper floors. The first defendant and appellant is occupying the ground and first floors of the premises in question and the second defendant, who is not an appellant, and the third defendant, who has appealed, are the administrators of the estate of one K. Shaik Abdul Kader who died intestate in India on 24th August, 1947, and who carried on business on the ground floor and until 1941 resided with his assistants on the two upper floors. The third defendant is now residing on the second floor.

The facts so far as they are now material are not in controversy.

Some time before the last war the deceased became a monthly tenant of the premises. In 1941 he went to India and did not at any time return to Singapore although a business continued to be conducted on the Circular Road premises in his name. The contractual tenancy was terminated by a notice to quit which expired on 31st October, 1946, and the Bank then commenced proceedings to obtain possession on the ground that they required the premises for their own use. These proceedings were unsuccessful and rent continued to be paid and accepted in the name of Shaik Abdul Kader.

After Shaik Abdul Kader's death, which did not become known to the Bank until some time in 1960, his business was carried on by one M. M. Ali who was granted Letters of Administration to the estate of the deceased on 5th April, 1948. Some time in 1948 the third defendant, the third son of the deceased, who was then a boy of 17, came to Singapore from India for the first time in his life. Since then he has lived part of the time in India and part of the time in Singapore and when in Singapore he has resided on the premises.

Then in 1960 a number of things happened. At a date which is in dispute but is not very material the Bank learned for the first time that the deceased had died in 1947. On 25th May the third defendant and the second defendant, who is his brother, obtained an order from the Court revoking the grant of administration in favour of M. M. Ali and making a grant in their own favour jointly. On 1st November, when he knew that the present proceedings were about to be commenced the third defendant purported to sublet the ground and first (floors) of the premises to the first defendant who went into occupation. And finally, on 11th November, the Bank issued the writ in these proceedings in which they claimed against all three defendants an injunction and damages for trespass, a declaration that the right title and interest of K. Shaik Abdul

Kader terminated on his death in 1947 and possession of the premises.

In the event Buttrose J., took the view that on the expiration of the notice to quit on 31st October, 1946, the deceased became a "statutory tenant" by reason of section 8 of the Increase of Rent (Restriction) Ordinance, 1939, as amended by the Increase of Rent (Restriction) (Amendment) Ordinance, 1941, which protected him against ejectment proceedings by the landlord. His only right as statutory tenant was a personal right to possession of the premises and was extinguished on and by his death and did not pass to his estate. Moreover the continued acceptance of rent did not necessarily constitute a new tenancy; it was a matter which depended on the intention of the parties and there was no evidence of any such intention on the part of the Bank. In consequence he gave judgment in favour of the plaintiff Bank as prayed.

Against that decision the first and third defendants have now appealed.

There is one ground of appeal, and one only, and it is on a point that was not argued at the trial. It is based on the provisions of sections 16 and 17 of the Control of Rent Ordinance, 1947 (now sections 27 and 28 of the present Ordinance — Cap. 242) which repealed and replaced the 1939 Ordinance with effect from 8th September, 1947, that is fifteen days after the death of the deceased.

The material portions of these sections read as follows:—

"27. The following persons are statutory tenants under this Ordinance, namely:—

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord;

. . . . . .

28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely:—

(a) he shall be deemed to hold as tenant from month to month,

. . . . . .

(b) his tenancy shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination;"

On that it was urged that a statutory tenancy can only be terminated by a landlord by giving the statutory tenant a month's notice to terminate his tenancy.

I pause here to observe that if that contention be well-founded then in the last fifteen years several thousand unfortunate statutory tenants both in Singapore and the Federation have been unlawfully evicted. That consideration, of course, does not necessarily show that the argument is without substance, nor does it absolve us from the duty of examining it now that it has been raised. I am happy, however, to be able to say that on examination it is clear that there is no need to shed tears for old injustices.

The truth is that the persuasiveness and felicity with which counsel for the appellants has presented his argument have clothed, as in a veil of magic, a logical fallacy the nature of which I shall proceed to demonstrate.

Section 28 only applies to a tenancy where the tenant is a statutory tenant. By reason of section 27(a) a statutory tenant of premises must satisfy all of four conditions. As I said in the Federation case of *Ramasamy Pillai* v. *Meyappa Chettiar*:—[1]

"before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:—

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned or anything of the sort;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises."

Once a person ceases to satisfy any one of these conditions he ceases to be a statutory tenant and so he no longer has a statutory tenancy for the purposes of section 28. This dilemma thus arises. So long as he continues to fulfil all four conditions he is a statutory tenant and *ex hypothesi* his statutory tenancy cannot be determined by his landlord giving notice to him, although, of course, and this is clearly the object of section 28(b), it can be determined by his giving notice to the landlord. On the other hand, once he ceases to fulfil one of the four conditions his tenancy ceases to be a statutory one and section 28(b) has no application because it only applies to statutory tenancies.

In the present case the position when the tenant died was that his contractual tenancy had already been determined. He himself had long ceased to occupy the premises although no doubt he was in possession of them by his agents for the purposes of his business. His position immediately prior to his death was that of a statutory tenant. In the case of *Ramasamy Pillai* v. *Meyappa Chettiar, supra,* I expressed the view that for reasons which I do not propose to repeat here there is no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts, and I have listened to nothing in the present case which creates any doubt in my mind as to the correctness of that view. The position of such a person in England was thus described by Bankes L.J. in the case of *Keeves* v. *Dean* [2] as follows:—

"His right is a purely personal one, and as such, unless the statute expressly authorizes him to pass it

on to another person, must cease the moment he parts with the possession or dies."

It is true that the Court was concerned with a purported assignment of a statutory tenancy and that Bankes L.J. went on to say that he desired "to reserve the question as to the right of a person who succeeds on the death of a statutory tenant". In the later case of *John Lovibond & Sons Ltd.* v. *Vincent*,[3] however, it was held applying the principle in *Keeves* v. *Dean* that the right of a statutory tenant is a purely personal right and cannot be transmitted by will.

In the circumstances no rights of any sort in respect of the premises occupied by Shaik Abdul Kader passed to the Chief Justice or to his family or to his personal representative or to anybody else and those who were in physical occupation of the premises after his death were trespassers.

For these reasons I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Wee Chong Jin C.J. (Singapore)** concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith*; *Donaldson & Burkinshaw.*

HORNBEAM CO. LTD. v. LEMBAGA ALAT-ALAT PEMBAJARAN LUAR NEGERI & ORS.

[F.C. (Thomson L.P., Wee Chong Jin C.J. & Tan Ah Tah J.) December 18, 1963]

[Singapore — Federal Court Civil Appeal No. 72 of 1963]

Practice & Procedure—Interlocutory order by former Court of Appeal (Singapore)—Leave to appeal to the Yang di-Pertuan Agong—When Federal Court "considers" it fit for appeal—Grounds on which leave will be granted—Courts Ordinance (Cap. 3), s. 31(1)(b)—Malaysia Act, 1963.

Leave to appeal to the Yang di-Pertuan Agong against an interlocutory order of the former Court of Appeal (Singapore) will be granted only if the applicants can bring themselves within section 36(1)(b) of the (Singapore) Courts Ordinance which as read with the Malaysia Act states that an appeal will lie from any interlocutory judgment or order if the Federal Court "considers" it a fit one for appeal to His Majesty.

Before the applicants can succeed they must be able to show that there is at least an arguable case for reversing the conclusion at which the Court of Appeal arrived. They must show that not only are there defects in the chain of reasoning which led to the result but also that they were deprived of something to which they were entitled, in some way prejudiced and that they are in some way likely to suffer if the decision appealed from is allowed to stand.

Case referred to:—

(1) *Banks* v. *Hollingsworth* [1893] 1 Q.B. 442.

FEDERAL COURT.

A. P. Godwin for the appellants/applicants.

E. W. Barker for the respondents.

Thomson L.P. (delivering oral judgment):

This is an application for leave to appeal to His Majesty the Yang di-Pertuan Agong against an order of the former Court of Appeal in Singapore.

The order which it is sought to appeal against is not a final one. It is an interlocutory one and although the amount of money involved is said to be very great (something in the neighbourhood of two and a half million dollars) the appellants are only entitled to appeal if they can bring themselves within section 36(1)(b) of the Singapore Courts Ordinance which as read with the Malaysia Act says that an appeal shall lie from the Court of Appeal (that is the Singapore Court of Appeal) to the Yang di-Pertuan Agong from any interlocutory judgment or order which the Federal Court considers a fit one for appeal to His Majesty.

In view of certain observations of Lord Esher in the case of *Banks* v. *Hollingsworth* [1] I would emphasise the word "considers".

The history of the matter is this.

On 22nd February, 1960, an action was commenced by the Exchange Control Board in Indonesia, and a banking company incorporated in Holland, against the defendants. The claim was based on the alleged infringement by the defendants of certain rights of the Exchange Control Board under a number of bills of lading which had been assigned by the Board to the Dutch Bank.

The defence was that the Exchange Control Board never had any rights under the bills of lading, that if it had any rights they had not been infringed in any way by the defendants and that in any event if the Board had any such rights and if they had been infringed by the defendants they had not been properly assigned to the Dutch Bank.

That was the framework of the action which was commenced by writ on 22nd February, 1960. At some time, whether before or after that date is by no means clear and in my view immaterial, the Government of Indonesia took some sort of action in respect of the Dutch Bank. That action has been described by the word "nationalised" and I do not think there is any concern of ours at this stage what is the exact connotation of the word. In consequence of what was done, however, it was thought that the rights *tanta et talia* of the Dutch Bank had passed or been assigned to a body called the Bank Koperasi, Tani dan Nelajan (which I shall call the "Co-operative Bank").

On that there were two courses open to the plaintiffs and to the Co-operative Bank.

The Co-operative Bank could have issued a writ against the defendants and then no doubt there would have been proceedings taken to have the two actions, which would then have been